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December 12, 2003

T.R.A. DOCKET ROOM

Honorable Deborah Taylor Tate, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

In Re: Implementation of the Federal Communications Commission's Triennial  
Review Order (Nine-month Proceeding) (Switching)

Docket No. 03-00491

Dear Chairman Tate:

Enclosed please find the original plus fourteen (14) copies of MCImetro Access  
Transmission Services, Inc. and Brooks Fiber Communications of Tennessee, Inc. (collectively  
"MCI") Motion to Compel in the above-referenced docket.

Copies have been served on all parties of record.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

Jon E. Hastings

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**IN RE:**

<b>Implementation of the Federal</b>	)	
<b>Communication's Commission's</b>	)	<b>DOCKET NO.</b>
<b>Triennial Review Order – 9 MONTH</b>	)	<b>03-00491</b>
<b>PROCEEDING – SWITCHING</b>	)	

**MCI'S MOTION TO COMPEL**

Pursuant to Authority Rule 1220-1-2.11(9) and Rule 37.01 of the Tennessee Rules of Civil Procedure, as well as the Hearing Officer's Order of October 27, 2003, as amended, setting a procedural schedule, MCImetro Access Transmission Services, LLC and Brooks Fiber Communications of Tennessee, Inc. (collectively, "MCI") hereby request that the Tennessee Regulatory Authority ("Authority") issue an order compelling BellSouth Telecommunications, Inc. ("BellSouth") to respond to MCI's Discovery Requests that are the subject of this Motion (individually, each as a "Request" and collectively "Discovery Requests").<sup>1</sup>

MCI has conferred with BellSouth in an effort to narrow the issues remaining for resolution by the Authority, and those Requests to which BellSouth has stated it will provide supplemental responses, or has referred MCI to documents that, according to BellSouth, have been provided to it in this docket, are not the subject of this Motion. The Requests that are the subject of this Motion are those concerning which MCI and BellSouth have conferred and have been unable to resolve, for specific reasons discussed below (Request Nos. 12, 28 and 125), or those to which BellSouth has objected and has

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<sup>1</sup> MCI filed and served its discovery requests on October 27, 2003.

not filed a substantive response, and which therefore are the subject of disagreement between MCI and BellSouth as to the applicable legal standards. MCI and BellSouth may continue to confer concerning these Requests.

## **I. INTRODUCTION**

This Motion is brought on the grounds that BellSouth has raised several objections that are without merit, given the detailed, fact-intensive analysis that the Authority must conduct in this proceeding pursuant to the Federal Communications Commission ("FCC") in its *Triennial Review Order* ("TRO"). BellSouth initially objected to several Requests.<sup>2</sup> Subsequently, BellSouth filed public responses to MCI's discovery,<sup>3</sup> followed by delivery to MCI of a disc containing proprietary supplemental responses, and the filing of supplemental responses.<sup>4</sup>

The information sought in MCI's data requests is necessary for MCI, other parties and the Authority to conduct the granular analysis mandated by the TRO regarding whether CLECs will be impaired without access to mass market switching unbundled network elements ("UNEs"). All of MCI's Discovery Requests that are the subject of this Motion are reasonably calculated to lead to admissible evidence in the Authority's implementation of the TRO regarding mass market UNE switching, and MCI respectfully requests that the Authority direct BellSouth to respond to MCI's Discovery Requests.

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<sup>2</sup> BellSouth Telecommunications Inc.'s General and Specific Objections To MCImetro Access And Brooks Fiber's First Discovery Request, pp 6-7, dated November 6, 2003 (hereafter "BellSouth's Objections").

<sup>3</sup> BellSouth Telecommunications, Inc.'s Responses to MCI's First Set of Interrogatories and First Request for Production of Documents, dated November 24, 2003 (Hereafter "BellSouth's Responses").

<sup>4</sup> These documents were filed December 4, 2003, and will be referred to as "BellSouth's Supplemental Responses".

## II. STANDARD FOR DISCOVERY

The standard for discovery in Tennessee is broad – a party may obtain discovery regarding any matter relevant to the subject matter or issues in the action.<sup>5</sup> Relevance to the subject matter of the action is not the same as admissibility; rather, the test is whether the information sought is reasonably calculated to lead to the discovery of other evidence that would be admissible.<sup>6</sup> The standard for relevance to the subject matter of the case - “calculated to lead to discovery of admissible evidence” - is to be applied liberally, and any doubt is generally resolved in favor of permitting discovery.<sup>7</sup> Further, the Authority should reject objections or requests for limitations for which BellSouth does not provide specific facts or sufficient reasons as part of its objections.<sup>8</sup>

The FCC and the Authority have already established that the issues relevant in this proceeding are both deep and broad. The FCC made a national finding that CLECs are impaired without unbundled access to mass market switching. However, the TRO mandates that the Authority must conduct a highly granular analysis of numerous complex and fact-specific economic and operational matters to determine whether the ILECs have overcome the FCC’s national findings of impairment. Thus highly detailed information about all carriers’ facilities, operations, and current and potential ability to provide effective switch-based competition is necessary for the Authority to fulfill its fact-finding mandate. This is true regardless of whether the parties seek to challenge the

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<sup>5</sup> Rule 26.02(1) of the Tennessee Rules of Civil Procedures permits parties to obtain any information that is relevant and not privileged. TRA Rule 1220-1-2-.11 requires that discovery in contested cases before the agency be “effectuated in accordance with the Tennessee Rules of Civil Procedure.” See *Duncan v. Duncan*, 789 S.W.2d 557, 560-61 (Tenn. Ct. App. 1990).

<sup>6</sup> Rule 26.02(1) of the Tennessee Rules of Civil Procedure states, in part, “It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”

<sup>7</sup> See *Duncan v. Duncan*, 789 S.W.2d 557, 560-61 (Tenn. Ct. App. 1990).

<sup>8</sup> Id

national impairment findings based on the actual deployment “triggers” or the potential deployment tests. Accordingly, BellSouth’s objections to requests being overly broad or burdensome should be rejected and BellSouth should be ordered to respond appropriately.<sup>9</sup>

### **III. THE AUTHORITY SHOULD COMPEL RESPONSES TO MCI’S DISCOVERY**

Although MCI is seeking detailed information in its Discovery Requests, the information sought in each Request is critical to MCI’s ability to prosecute its case with regard to such subject matter.<sup>10</sup> MCI hereby moves to compel responses to its Requests on the grounds set forth below.

#### **Request Nos. 12, 25 and 28 (Work Effort)**

MCI-12 With respect to the hot cuts identified in response to MCI-5, please provide a detailed description of each work effort your personnel had to perform, the costs you incurred, and the maximum number of hot cuts that you have accomplished per day per CLLI code since July 1, 2001.

MCI-19 Please state whether cross connect/jumper job performance has ever been the subject of litigation, arbitration, mediation, labor negotiations, formal labor

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<sup>9</sup> For example, BellSouth General Objections 1, 7, 10 and 11 are premised on the question being overly broad, unduly burdensome and/or oppressive.

Similarly, BellSouth’s twelve general objections should be rejected, except for General Objection 2, which concerns responsive documents subject to the attorney-client privilege or work product privilege, as the Tennessee Rules of Civil Procedure recognize that privileged documents are not subject to discovery requests. However, Parties are required to produce a log of such materials, objecting and describing them with specificity, in order that the parties may contest overly broad claims. Tenn.R.Civ.Proc. 26.02(5) requires that claims of privilege be made with specificity and with a description of the documents sufficient to allow others to evaluate the validity of the claim. Accordingly, General Objection 2 should be rejected to the extent not compliant with Tenn R.Civ.Proc. 26.02(5).

<sup>10</sup> Since this phase of the proceeding concerns implementation of the TRO regarding mass market UNE switching, MCI will defer to Docket No. 03-000527 efforts to obtain answers from BellSouth for Requests 74-75, 79, 83, 87, 91 and 129. Because CLECs, however, must be able to obtain UNE loops quickly, efficiently and seamlessly in order to meet customer needs should UNE switching be withdrawn, questions regarding UNE-L provisioning are directly relevant to this proceeding, and thus MCI continues to seek such data

disputes, informal labor disputes, or evaluation by any third party (e.g. federal or state agencies, etc.). If the answer is anything other than an unqualified no, please provide supporting details and documentation.

MCI-28 Please provide the studies, analyses, and/or calculations of cross connect/jumper job work times and loaded labor costs from the most recent non-recurring cost study submitted by BellSouth to the Tennessee Regulatory Authority.

BellSouth objects to these requests on the following grounds: (a) Request No. 25 is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter (General Objection 4); (b) Request No. 28 seeks information that is available as a matter of public record (General Objection 5); (c) Request 12 is unduly burdensome, expensive, oppressive or excessively time consuming (General Objection 7), and requests information that BellSouth does not maintain in the format requested by MCI (General Objection 11).

These questions are part of a group of questions seeking information concerning the work effort entailed in hot cut migrations actually performed to date and the related costs (Request 12) and other explicitly related information pertaining to cross-connects/jumper jobs (Requests 25-26 and 28-29).

Specifically, Request No. 12 (which refers to Request No. 5; see above) asks for the “maximum number of hot cuts that you have *accomplished* per day per CLLI code since July 1, 2001.” (Emphasis added.) BellSouth’s Supplemental Response is “(t)here is no ‘maximum’ number of hot cuts that BellSouth has *established* for any central office”. (Emphasis added.) Thus the response does not answer the question.

As to Request No. 25, BellSouth’s Response provides no substantive information, and does not indicate that BellSouth will substantively respond.

For BellSouth's Response to Request No. 28, MCI is referred to a worksheet or CD filed six (6) years ago in a different docket. The worksheets and CD would have been the subject of proprietary claims by BellSouth in that docket (including the obligation to destroy or return the data in question, as well as a limitation on use of the data beyond the subject docket), and are no longer available to MCI.

BellSouth's objections are misplaced. The information requested by MCI is relevant to the analysis mandated by the TRO because it will allow the Authority to determine whether BellSouth has in place sufficient processes, or can modify and scale its current processes to handle the increased volume of UNE-P to UNE loop migrations that will occur if UNE switching/UNE-P is withdrawn. The TRO states that the hot cut process is limited, in part, by the "labor intensiveness of the process, including substantial incumbent LEC and competitive resources devoted to coordination of the process, the need for highly trained workers to perform the hot cuts, and the practical limitations on how many hot cuts the incumbent LECs can perform without interference or disruption." (TRO, ¶ 465) MCI's requests seek to obtain information that reflects the "labor intensiveness" of BellSouth's current practices and related factors affecting BellSouth's ability and capacity to complete the manual hot cut process. Each of MCI's requests is proper, consistent with the TRO and within the scope of issues that the Authority will consider in this proceeding. By contrast, BellSouth objects and seeks to withhold relevant information on the basis that MCI's Discovery Requests are burdensome and unclear. Accordingly, MCI respectfully requests that the Authority reject BellSouth's objections and order it to provide responses.

### **Request Nos. 30-31 (Performance Measures)**

MCI-30 Please provide a list, detailed description, method of sampling, method of calculation, and monetary penalty for all UNE performance measures or metrics applicable in Tennessee. State which of these measurements or metrics you assert is relevant to the issues in this proceeding.

MCI-31 Please provide all UNE performance measure or metric reports applicable in Tennessee, including a report of any penalties paid, for each month since July 1, 2001.

BellSouth objects to this series of questions on the following four grounds: (a) not reasonably calculated to lead to the discovery of admissible evidence and not relevant to the subject matter (General Objection 4); (b) unduly burdensome, expensive, oppressive or excessively time-consuming (General Objection 7); (c) the requested information is available as a matter of public record; and (d) the requests are overly broad in that they request “all” particular documents. BellSouth does not indicate whether it intends to file any substantive response.

BellSouth’s objections are misplaced. In this series of requests, MCI seeks information pertaining to performance measures in Tennessee, including but not limited to penalties paid, and third party evaluations of BellSouth’s performance. The TRO directs the Authority to conduct a granular analysis of impairment for UNE mass market switching, taking into account economic and operational barriers to entry for CLECs. Performance metrics provide a source of data to determine whether BellSouth’s processes are sufficient to support competitive entry on a sufficient basis, and/or whether BellSouth’s processes for its retail operations are the same as, or better than those for provisioning UNEs and resale services used by CLECs. (TRO, ¶ 456, n. 1399) Since



BellSouth contends its “batch” hot cut process is provisioned the same way as its “individual” hot cut process, the information sought is particularly relevant.

Each of MCI’s requests is proper, consistent with the TRO and within the scope of issues that the Authority will consider in this proceeding and the Requests are reasonably calculated to lead to admissible evidence. Accordingly, MCI respectfully requests that the Authority reject BellSouth’s objections and order it to provide responses.

**Request Nos. 76-77, 80-81, 84-85, 88-89 (OSS)**

MCI-74 Please provide a list of all OSS used by BellSouth for pre-ordering, ordering, provisioning, maintenance and repair and billing for BellSouth retail services, including all of the following: 1) full name of system; 2) acronym for system (if any); 3) detailed description of capabilities and function of system; 4) whether system was developed and is maintained by BellSouth or by third party (and name of third party).

MCI-75 Please provide a list of all OSS used by BellSouth for pre-ordering, ordering, provisioning, maintenance and repair and billing for services offered by a BellSouth subsidiary or affiliate, including all of the following: 1) full name of system; 2) acronym for system (if any); 3) detailed description of capabilities and function of system; 4) whether system was developed and is maintained by BellSouth or by third party (and name of third party).

MCI-79 Please provide a schematic drawing showing the interrelationships between all OSS used by BellSouth for pre-ordering, ordering, provisioning, maintenance and repair and billing for BellSouth retail services, including but not limited to the following: 1) full name of system; 2) acronym for system (if any).

MCI-80 Please provide a schematic drawing showing the interrelationships between all OSS used by BellSouth for pre-ordering, ordering, provisioning, maintenance and repair and billing for services offered by a BellSouth subsidiary or affiliate, including but not limited to the following: 1) full name of system; 2) acronym for system (if any).

MCI-84 Please provide a detailed process flow chart for all OSS used by BellSouth for pre-ordering, ordering, provisioning, maintenance and repair and billing for BellSouth retail services, including but not limited to the following: 1) full name of system; 2) acronym for system (if any).

MCI-85 Please provide a detailed process flow chart for all OSS used by BellSouth for pre-ordering, ordering, provisioning, maintenance and repair and billing for services offered by a BellSouth subsidiary or affiliate, including but not limited to the following: 1) full name of system; 2) acronym for system (if any).

MCI-88 Please provide a complete set of the current business rules for all OSS used by BellSouth for pre-ordering, ordering, provisioning, maintenance and repair and billing for BellSouth retail services, including but not limited to the following: 1) full name of system; 2) acronym for system (if any).

MCI-89 Please provide a complete set of the current business rules for all OSS used by BellSouth for pre-ordering, ordering, provisioning, maintenance and repair and billing for services offered by a BellSouth subsidiary or affiliate, including but not limited to the following: 1) full name of system; 2) acronym for system (if any).

BellSouth objects to this series of questions on the following four grounds: (a) Request Nos. 77, 81, and 89 seek information about BellSouth's affiliates (General Objection 1); (b) several of the requests are not reasonably calculated to lead to the discovery of admissible evidence and are not relevant to the subject matter, (General Objection 4);<sup>11</sup> and (c) Request No. 88 is unduly burdensome, expensive, oppressive or excessively time-consuming (General Objection 7). BellSouth does not indicate whether it will provide any substantive response.

BellSouth's objections are misplaced and should be rejected. This series of questions seeks information about OSS used by BellSouth for its retail services (Request Nos. 76, 80, 84, 88), CLEC-UNE-P (Request No. 80), and OSS used by BellSouth's affiliates (Request Nos. 77, 81, 85, 89). This series of questions inquires into whether BellSouth's OSS process flows and business rules for UNE-P, UNE-L, ILEC retail services, and ILEC affiliate services are at parity. The Telecommunications Act of 1996

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<sup>11</sup> Requests 76-77, 80-81, 84-85, and 88

and FCC Orders require parity between the OSS used to support ILEC retail and affiliate services and the OSS used to support UNEs. UNE-P based service today is a fully-automated, flow-through process. There are five categories of OSS as defined by the FCC.<sup>12</sup> Seamless transparent performance in each of the five categories is important to a satisfactory and sustainable customer experience. (TRO, ¶ 467)

The use, availability, and support for UNE-L are critical. As the FCC noted, UNE-L is the primary means of reaching customers who will be affected by the withdrawal of UNE-P, to the extent such withdrawal occurs. Indeed, the need for UNE-L is so great and is expected to occur in such great volumes that the FCC directed the creation of a special “batch cut” process to facilitate the use of UNE-L. (See generally, TRO, ¶¶464-475) As such, questions involving mass market loops and their ordering, provisioning, etc., are critical here.

#### **Requests Nos. 102-103 (Cable and CMRS Switches)**

MCI-102 Please identify all switches, other than circuit switches, currently in use by cable operators to provide local exchange voice service, and provide the following information:

- (a) the identity of the cable operator;
- (b) the number of units passed (reported separately by residential and business units) by the portion of the cable operator’s network capable of supporting local exchange voice service;
- (c) the number of residential units passed by the cable operator’s network that are subscribing to cable (video) services;
- (d) the number of residential units passed by the cable operator’s network that are subscribing to broadband data services;
- (e) the number of residential units subscribing to cable (video) services that also obtain local exchange voice service from the cable operator;
- (f) the date on which the cable operator first began providing local exchange voice service;
- (g) the price of local exchange voice service provided by the cable operator;

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<sup>12</sup> The five categories are pre-ordering, ordering, provisioning, maintenance/repair, and billing.

- (h) service quality of local exchange service provided by CMRS operators compared to local exchange service provided by BellSouth (e.g., service outages, dropped calls; E911, etc.);
- (i) maps of the cable operator's serving territories with locations of ILEC central offices or wire centers identified;
- (j) any business cases, analysis, or projections for entry of cable companies into the broadband data and/or local exchange voice markets (whether the information or documents were prepared by you, on your behalf, or by a third party).

MCI-103 Please identify all switches, other than circuit switches, currently in use by CMRS operators to provide local exchange voice service, and provide the following information:

- (a) the identity of the CMRS operator;
- (b) the number of customers of the CMRS operator who are subscribing to local exchange voice services;
- (c) the number of customers of the CMRS operator who are subscribing to broadband data services;
- (d) the minimum, maximum and average throughput rate for the CMRS operator's broadband data services each month for the last 12 months;
- (e) the date on which the CMRS operator first began providing local exchange voice service;
- (f) the price of local exchange voice service provided by the CMRS operator;
- (g) the service quality of local exchange service provided by the CMRS operator compared to local exchange service provided by BellSouth (e.g., service outages, dropped calls. etc.);
- (h) a description of the entire service territory the CMRS operator can reach;
- (i) the percentage of BellSouth's serving territory (by central office or wire center) that the CMRS operator can reach;
- (j) the percentage of BellSouth's serving territory (by central office or wire center) to which the CMRS operator is providing local exchange voice service;
- (k) the percentage of BellSouth's serving territory (by central office or wire center) to which the CMRS operator is providing broadband data service;
- (l) any business cases, analysis, or projections for entry of CMRS operators into the broadband data and/or local exchange voice markets (whether the information or documents were prepared by you, on your behalf, or by a third party).

BellSouth objects on the grounds that the requests seek information about wireless and cable operators who may be non-parties. BellSouth does not object on relevance grounds, but refuses to provide substantive responses.

BellSouth should be required to respond to these requests concerning basic information about Cable and CMRS switches. Although BellSouth directs MCI to seek the information from others, BellSouth also highlights their status as non-parties, not subject to normal discovery. As part of its interconnection with voice providers in Tennessee, BellSouth maintains considerable information on switches maintained by other operators. Further, BellSouth has likely conducted such analysis to support its decision whether and where to challenge UNE switching. Although BellSouth would doubtless prefer to maintain the litigation advantage of having all of this information to itself, it should not be allowed to do so. BellSouth should be directed to divulge the requested information about the switches of others.

**Request Nos. 125 (Loop Plant Baseline Data)**

MCI-125 Please provide, on a CLLI-code-specific basis, detailed information concerning copper feeder plant that 1) has been retired since January 1, 2000 or 2) BellSouth plans to or is considering retiring in the next three years.

BellSouth objects based on undue burden and on “format” grounds to Request No. 125. Once facility is retired, apparently BellSouth has no mechanized means to reconstruct what was retired, and when it was retired. BellSouth, however, may have advised regulatory agencies as to its retirement plans, or there may be other records within its regulatory department. Moreover, BellSouth does not provide a response to the question whether BellSouth *has* retired copper feeder since early 2000.

Again, BellSouth concedes the relevance of this information by not objecting on relevance grounds. These questions seek basic information about the ILEC’s loop plant. The questions about copper loop plant are relevant to whether CLECs have access today,

and will have access in the future, to loops on which they can provision voice and DSL, given that the TRO denies CLECs access to the “packet” portion of ILEC hybrid fiber/copper loops. TRO, ¶¶286, 296, 519-520. This information is also relevant to questions of potential deployment. See, e.g., Id., ¶¶286, 296, 512, 519, 520@fn. 1592, 1596-7.

BellSouth’s “format” objection is again misplaced—MCI does not request some specific “format” such as a table or spreadsheet. What MCI does request is granular information—which is what the FCC expressly directed the states to consider. (TRO, ¶495)

**Request No. 130 (Warm Line Information)**

MCI-130 On a statewide and CLLI-code-specific basis in Tennessee, please state the percentage of working loops used or available to support BellSouth retail services that are configured as “connect through”/“warm line” (i.e., loops that have electrical continuity between the customer premises and the BellSouth switch, and over which a person at the customer premises can call 911 and BellSouth repair service).

BellSouth objects to the request, without indicating it intends to file a substantive response, on grounds of relevance and relationship to admissible evidence, on grounds of burden, and on grounds of format.

This request, seeking information on “connect through” or “warm line” status of otherwise “disconnected” lines, provides data that will enable the Authority to evaluate BellSouth’s current claimed ability to quickly provision volumes of loops. Including loops that are still in service via warm line in provisioning performance skews results because such loops require no wiring work on the frame in the wire center. Further, the volumes of these lines affect both lines that are available to be placed in service to a

CLEC and lines a CLEC may be disconnecting. (See, e.g., TRO, ¶465) The information is available only from BellSouth and will be most valuable in a suitably granular form. Beyond the request for granular detail, no specific “format” such as a table or spreadsheet is requested, so MCI fails to understand BellSouth’s “format” objection.

**Request No. 138 (c) and Request No. 140(a) (Names of Cross Connecting CLECs)  
(Wire Center Collocation Information)**

MCI-138 On an individual wire center basis, please provide the following for BellSouth in Tennessee:

c) names of carriers currently occupying collocation space;

MCI-140 For cross-connects between CLEC collocation arrangements in your central offices in Tennessee, please provide:

(a) name(s) of the CLECs whose collocation arrangements are cross-connected to each other;

BellSouth objects on CPNI grounds. Relevance is not an issue.

Request No. 138 seeks collocation information by wire center, including available space, space that may become available, space that may be freed up by CLECs going out of business, etc. Request No. 140 seeks the names of parties cross connecting in BellSouth collocations. MCI thinks BellSouth’s CPNI objection is misplaced. 47 CFR §64.2007 pertains only to disclosure for marketing purposes, not competitive analysis directed by a federal agency. If BellSouth chooses to raise a claim that collocation information is protected CPNI, then MCI, which has entered into a protective agreement with BellSouth, *could* proceed via subpoena (taking BellSouth’s stated willingness to provide the information pursuant to subpoena as a waiver of objections to issuing such a subpoena, of course), but such procedure is cumbersome and should not be necessary. BellSouth is the provider of collocation in its wire centers, and thus has detailed and

exclusive access to information regarding collocation. Accordingly, providing such information cannot be burdensome.

**Requests Nos. 142-146 (Revenue and Subsidy Information)**

MCI-142 Please identify the average monthly revenue per line that you consider to constitute low revenue, average revenue and high revenue for 1) residential customers and 2) business customers. Please provide a detailed explanation of whether high revenue customers typically purchase a single service, or a bundle of services, and if they purchase a bundle, which services, features or functions are included in the bundle.

MCI-143 Please identify, by CLLI code, all wire centers for which you receive universal service fund subsidies and provide the following information for each:

- (a) whether the subsidy is from federal or state sources;
- (b) the amount of the subsidy on a per loop or per customer basis;
- (c) whether the subsidy applies to all customers served by the central office/wire center, or only a portion thereof;
- (d) if the subsidy applies only to a portion of the customers, please provide the number of customers and the percentage of those customers to the total number of customers served in the central office/wire center.

MCI-144 With respect to any subsidies that you contend are implicit and/or explicit in your Tennessee retail rates for any service, please:

- (a) identify and describe the service;
- (b) state separately the amount of the subsidy you contend is implicit and/or explicit in the non-recurring and monthly recurring rates for the service;
- (c) provide all cost studies, calculations, and other materials that directly support your contention that the service is implicitly and/or explicitly being subsidized.

MCI-145 With respect to each of the voice-grade loops identified in response to F-3 above, please state the average total monthly revenues earned each month per line in Tennessee since July 1, 2001 by wire center, local access and transport area ("LATA") and metropolitan serving area ("MSA"). Also please identify the source of those revenues by service and/or feature type (i.e., local voice only, local voice plus vertical features, local long distance only, DSL only, bundles of any of the above, and/or other services or features).

MCI-146 For each switch identified in your response to MCI-97 above other than circuit switches, please provide the following for each switch:

- (a) all costs arising from the provision of local exchange service using the switch (including the recurring and non-recurring charges for the switch, software,



installation, maintenance, loops, collocation, transmission/concentration equipment, etc.);  
(b) the average total monthly revenues earned per line in Tennessee since July 1, 2001, reported by wire center, LATA and metropolitan statistical area (“MSA”). Also please identify the source of those revenues by service and/or feature type (i.e., local voice only, local voice plus vertical features, local long distance only, DSL only, bundles of any of the above, and/or other services or features);

BellSouth objects to all of these requests, without indicating it intends to substantively respond, on grounds of relevance and likelihood of leading to evidence and “format”. BellSouth also objects to Request No. 142 to the extent it seeks affiliate information and to Request Nos. 145 and 146 on grounds of burden.

These are questions designed to elicit important information about market definition and considerations for potential entry. Request Nos. 142, 145, and 146 seek revenue information, expressly identified by the FCC as relevant for market definition (TRO, ¶496, fn. 1541) and potential deployment (Id., ¶519.) Request Nos. 143 and 144 seek information on USF and other subsidies, also specifically identified by the FCC as relevant (Id., ¶518.) Request No. 146 also seeks cost information, also expressly identified as relevant by the FCC (Id., ¶520.) BellSouth’s “format” objections are misplaced, for while some of these questions ask information based on previous answers to “table” questions, these questions merely ask for information and do not request it be provided in any particular table or spreadsheet. Finally, BellSouth’s objections as to burden and oppressiveness are also misplaced. Request No. 145 seeks only average information in order to determine loop revenue and trending, and Request No. 146 seeks cost and average revenue per switch, with a request to break down the revenue by service/feature.

### **Request No. 147 (Cost and Revenue Information)**

MCI-147 With respect to each of the two customer categories identified in response to MCI-110, please provide the following:

- (a) all categories and amounts of costs arising from providing local exchange service to each customer category (including the recurring and non-recurring charges for the switch, software, installation, maintenance, loops, collocation, transmission/concentration equipment, transport, hot cuts, OSS, signaling, etc.);
- (b) the average total monthly revenues earned per line since July 1, 2001 for each customer category, reported by wire center, local access and transport area (“LATA”) and metropolitan serving area (“MSA”).
- (c) the source of all revenues derived from each category loop identified in subpart (b) by service and/or feature type (i.e., local voice only, local voice plus vertical features, local long distance only, DSL only, bundles of any of the above, and/or other services or features).

BellSouth objects to this request, without indicating it intends to substantively respond, on grounds of relevance/likelihood of leading to evidence and “format” of the request.

This question, using BellSouth’s own definitions of mass market and enterprise customers, seeks information concerning all potential revenues and costs, including DSL, for a potential entry analysis. (See, e.g., TRO, ¶¶519-520.) Per-switch revenue information is relevant for market definition purposes (*Id.*, ¶¶496, 497.) Additionally, information on the crossover point is sought to demonstrate that the four-line top 50 MSA “carve-out” is not mandatory as a crossover point despite the FCC suggesting it, and that the “carve-out” has no apparent economic or operational basis. Again, the “format” objection is misplaced—MCI is seeking the data deemed relevant by the FCC, but is not requesting that it be provided in a certain tabular or spreadsheet format—only that it be provided in the granular fashion the FCC has indicated is proper.

### **Request Nos. 149-150**

MCI-149 For each type of digital loop carrier (“DLC”) equipment deployed by BellSouth in Tennessee, please provide BellSouth’s equipment capital costs for minimum, average and maximum configurations, in terms of number of lines supported.

MCI-150 For each type of digital loop carrier (“DLC”) equipment deployed by BellSouth in Tennessee, please provide BellSouth’s Engineered, Furnished and Installed (“EF&I”) costs for minimum, average and maximum configurations, in terms of number of lines supported.

BellSouth objects to these requests, without indicating it intends to substantively respond, on grounds of relevance and likelihood of leading to evidence.

BellSouth claims that its own cost data is not relevant as only the costs of a hypothetical competitor are relevant. As BellSouth, the largest ILEC in Tennessee, is most likely to have the most advantageous pricing available, BellSouth’s own costs and expenses provide a lower bound for any claimed costs of a competitor. This cost information is relevant as collocation and the equipment necessary to duplicate incumbent offerings is a necessary expense of CLECs in a post-UNE-P world (TRO, ¶¶513, 517, 520.)

### **Requests 162-164 (Demand Growth/Decline)**

MCI-162 On a CLLI-code-specific basis in Tennessee, please provide the BellSouth’s demand growth or decline for each of the last three years for each of the following BellSouth retail services: primary business voice lines, primary residential voice lines, additional business voice lines, additional residential voice lines, standalone DSL lines, BellSouth DSL service provisioned in the high frequency portion of a loop that also supports BellSouth narrowband analog voice service, CLEC DSL service provisioned in the high frequency portion of a loop that also supports BellSouth narrowband analog voice service, and CLEC DSL service provisioned in the high frequency portion of a loop that also supports [CLEC] narrowband analog voice service.

MCI-163 On a CLLI-code-specific basis in Tennessee, please provide BellSouth's current in-service quantities for each of the following BellSouth retail services: primary business voice lines, primary residential voice lines, additional business voice lines, additional residential voice lines, standalone DSL lines, BellSouth DSL service provisioned in the high frequency portion of a loop that also supports BellSouth narrowband analog voice service, CLEC DSL service provisioned in the high frequency portion of a loop that also supports BellSouth narrowband analog voice service, and CLEC DSL service provisioned in the high frequency portion of a loop that also supports [CLEC] narrowband analog voice service.

MCI-164 On a CLLI-code-specific basis in Tennessee, please provide BellSouth's expected, estimated or forecasted demand growth or decline for each of the next three years for each of the following BellSouth retail services: primary business voice lines, primary residential voice lines, additional business voice lines, additional residential voice lines, standalone DSL lines, BellSouth DSL service provisioned in the high frequency portion of a loop that also supports BellSouth narrowband analog voice service, CLEC DSL service provisioned in the high frequency portion of a loop that also supports BellSouth narrowband analog voice service, and CLEC DSL service provisioned in the high frequency portion of a loop that also supports [CLEC] narrowband analog voice service.

BellSouth objects to these requests on various grounds, including relevance/leading to evidence, burden due to granular detail, "format", and the fact that MCI has chosen to inquire more precisely than one other party. Specifically, BellSouth's Responses only answer part of each of these requests.

This related group of requests seeks information on demand growth or decline for specific services. This information is relevant to revenues possibly achieved by an efficient potential entrant. (TRO, ¶¶519, 520@fn. 1592, 1596-7) Additionally, this granular data is relevant to market definition questions (Id., ¶496.)

#### **Requests Nos. 169-173 (Market Elasticity)**

MCI-169 Please provide all calculations and/or estimates in BellSouth's custody or control of the market demand elasticity for local exchange service, stated separately for residential and business customers, if such separate calculations

and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.

MCI-170 Please provide all calculations and/or estimates in BellSouth's custody or control of the market demand elasticity for long distance service, stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.

MCI-171 Please provide all calculations and/or estimates in BellSouth's custody or control of the market demand elasticity for broadband service (i.e., DSL), stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.

MCI-172 Please provide all calculations and/or estimates in BellSouth's custody or control of the market demand elasticity for bundled local and long distance service, stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.

MCI-173 Please provide all calculations and/or estimates in BellSouth's custody or control of the market demand elasticity for bundled local, long distance, and broadband service (i.e., DSL), stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.

BellSouth objects that the information requested is not relevant or likely to lead to evidence and that information concerning long distance bundling is an inappropriate venture into affiliate matters. BellSouth refused to provide substantive responses.

First, the information requested here, all relating to market elasticity for local service and bundles of services including local, is extremely relevant to any analysis of potential deployment. (TRO, ¶¶517-519) In particular, elasticity is a key element in evaluating the fortunes of a new competitor entering a market where service is provided by a largely unchallenged incumbent as is the case in any analysis of potential deployment under the TRO. The states are directed by the FCC to conduct a business

case on the prospects of a new entrant in such circumstances. (TRO, fn. 1579) Second, the FCC specifically directed that any potential deployment case should consider revenue from all sources; so long distance (and other) revenues must be considered, regardless of BellSouth's efforts to hide its related affiliate revenues. (TRO, ¶1519, specifically mentioning toll, data, and long distance revenues.)

**Requests No. 175, 177-84 (Costs for providing service)**

MCI-175 Please provide BellSouth's calculation and/or estimate of its variable costs for providing local exchange service, stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.

MCI-177 Please provide BellSouth's calculation and/or estimate of its variable costs for providing long distance service, stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.

MCI-178 Please provide BellSouth's calculation and/or estimate of its marginal costs for providing long distance service, stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.

MCI-179 Please provide BellSouth's calculation and/or estimate of its variable costs for providing broadband service (i.e. DSL), stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.

MCI-180 Please provide BellSouth's calculation and/or estimate of its marginal costs for providing broadband service (i.e. DSL), stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.

MCI-181 Please provide BellSouth's calculation and/or estimate of its variable costs for providing bundled local exchange and long distance service, stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.

MCI-182 Please provide BellSouth's calculation and/or estimate of its marginal costs for providing bundled local exchange and long distance service, stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.

MCI-183 Please provide BellSouth's calculation and/or estimate of its variable costs for providing bundled local exchange, long distance and broadband service, stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.

MCI-184 Please provide BellSouth's calculation and/or estimate of its marginal costs for providing bundled local exchange, long distance and broadband service, stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.

BellSouth objects, without indicating whether it intends to respond substantively, claiming that these requests are not relevant and are not reasonably calculated to lead to discovery of admissible evidence.

The requested information is both highly relevant and specifically mentioned in the TRO as necessary to a state commission's impairment analysis as to whether entry is economic. (TRO, ¶¶515, 517) These barriers include any disparities between an ILEC's current costs versus a CLEC's costs. The FCC makes this point plain, "We recognize, as did the USTA court, that at bottom all these barriers can be expressed in terms of costs, and thus to the extent described throughout this section, cost differences remain relevant to the impairment analysis." (TRO, ¶85) Information concerning BellSouth's variable and marginal costs for providing all types of services to all types of customers must then be made available for comparison purposes.

Scale economies should also be considered in an impairment analysis. The FCC noted that a powerful barrier of entry can be created through a combination of scale economies, sunk costs, and first-mover advantage. (TRO, ¶¶87, 517) Although the simple existence of scale economies does not in and of itself constitute full impairment, the size of the disparity is relevant. Potential competitors will be at a “potentially significant cost disadvantage to the incumbent” if the competitors’ average costs are substantially higher than those of the incumbent. (TRO, ¶87) In markets where that is the case, “Profitable entry may not be possible if retail prices are close to the incumbent’s average costs. The greater the extent and size of the scale economies throughout the range of likely demand, the higher the barrier they pose.” (TRO, ¶87)

The FCC states this issue clearly:

When the incumbent LEC has absolute cost advantages, other firms may be deterred from entering the market. Particularly if the incumbent LEC is providing service at rates close to its average cost, competitive LECs may find it difficult or impossible to provide service in an economic fashion, because they likely will have higher average costs than the incumbent LEC.

(TRO, ¶ 90) The FCC has made clear that cost disparities, although not dispositive, are relevant to considering an entrant’s ability to enter. Thus the requested cost information is absolutely necessary for the Authority to conduct its impairment analysis. BellSouth’s marginal and variable costs also are relevant to expected post-entry pricing levels in the market.

BellSouth also argues that it should not have to respond to Request Nos. 177, 178, 181, 182, and 183 because answering would require information from its parent or



affiliate companies. In order to sustain this objection, it would be necessary for the Authority to find that BellSouth's affiliate responsible for providing long distance service is exempt from the Authority's scrutiny as part of this proceeding. Clearly, such finding would be incorrect. The TRO specifically requires that all revenues from all services be considered. These revenues should be compared to the carrier's costs to determine impairment. Moreover, ILEC costs of long distance are a lower bound on the costs likely to be experienced by an efficient potential entrant. (TRO, ¶¶485, 519, 520) Exempting intrastate long distance revenues or its costs would fly in the face of the TRO, aside from simply being illogical.

Finally, BellSouth adds an additional objection to Request Nos. 183 and 184. BellSouth claims that production of the requested information would be unduly burdensome as the company does not maintain information in the form requested by MCI. First, MCI does not seek to force BellSouth to create information or commission new studies. Rather, BellSouth should simply provide any relevant information it may have, in any form. The information requested by MCI is highly relevant because it seeks to gather revenue data necessary to determine whether operation is profitable and thus makes sense. In considering any economic barriers to entry, the TRA will be required to consider the potential revenues available in a given market. (TRO, ¶¶485, 519). Without this information, the TRA will not be able to determine whether switch-based competition is eventually possible in Tennessee.

**Request No. 185 (Affiliates' Services)**

MCI-185 Please state whether BellSouth has any affiliates or subsidiaries that provide local exchange voice services, long distance voice services and/or DSL services. If the response for any of these service is affirmative, please provide the

full name of the affiliate or subsidiary and a list of the service(s) provided by the affiliate or subsidiary.

BellSouth objects to this data request arguing that it is irrelevant and seeks information from affiliates.

The FCC specifically directed that any potential deployment case should consider revenue from all sources; so all local exchange, long distance, and broadband wireline revenues must be considered, regardless of BellSouth's unwillingness to divulge its affiliates' revenues. (*Id.*, ¶519, specifically mentioning toll, data, and long distance revenues.)

**Request No. 186-187 (Inter-LATA services)**

MCI-186 Please provide a copy of each executed contract (including attachments and/or amendments) between BellSouth and a long distance carrier for inter-LATA services and/or facilities.

MCI-187 With respect to each contract requested in MCI-186, please provide the total minutes of use, and/or total transport capacity purchased, as well as the total dollar amount paid for such minutes of use and/or transport capacity, stated on a quarterly basis for the past three years.

BellSouth argues that it should be exempted from answering these data requests because the information would not lead to relevant evidence and production would be unduly burdensome.

The FCC specifically directed that any potential deployment case should consider revenue from all sources; long distance (and other) revenues must be considered. (*Id.*, ¶519, specifically including toll, data, and long distance revenues.) The information requested by MCI is highly relevant because it seeks to gather revenue data necessary to

determine whether operation is profitable. In considering any economic barriers to entry, the Authority will be required to consider all the potential revenues available in a given market, including interLATA long distance revenues versus the service's costs. (TRO, ¶¶485, 519)

**Request Nos. 188-189 (Cost of Capital)**

MCI-188 Please provide all calculations or estimates in BellSouth's custody or control of BellSouth's current total and component (e.g., debt, preferred stock, equity, etc.) cost of capital, based on each of the following: a) market capital structure, b) book capital structure, and c) target capital structure. Please provide supporting documentation, including the documents relied upon to answer this question.

MCI-189 With respect to the cost of capital calculations or estimates requested in MCI-188, please provide such calculations or estimates for BellSouth's major types of service, at the most granular level available, including the following: a) residential local exchange service, b) business local exchange service, c) long distance service, d) DSL service and e) unbundled network elements (UNEs). Please provide supporting documentation, including the documents relied upon to answer this question.

BellSouth refuses to produce the information requested in Request Nos. 188 and 189 because the incumbent believes the information would not lead to relevant evidence and production would be unduly burdensome.

In reviewing unbundled switching, states must consider whether inherent difficulties with competitive switching facilities exist. (TRO, ¶515) States are required to determine whether entry is economic and must consider the cost of capital in that analysis. One of the possible cost advantages for an incumbent that a state must consider is an incumbent's lower cost of capital. (TRO, fn. 247, ¶88) The Authority will be unable to determine whether BellSouth enjoys a marked advantage if BellSouth is allowed to hide its cost of capital.

**Request No. 190-192 (Targeted Prices/Price Floors)**

MCI-190 Please describe in detail any legal, regulatory or other constraints on BellSouth's ability to target price reductions to specific geographic areas for each of the following: a) business local exchange service, b) residential local exchange service, c) long distance service and d) DSL service.

MCI-191 Please describe in detail any legal, regulatory or other constraints on BellSouth's ability to target price reductions to types of customers (including individual customers) for each of the following: a) business local exchange service, b) residential local exchange service, c) long distance service and d) DSL service.

MCI-192 Please describe in detail any price floors imposed by any law, regulation, [PUC] orders or rulings that constrain BellSouth's ability to reduce prices for each of the following: a) business local exchange service, b) residential local exchange service, c) long distance service and d) DSL service. For each such price floor, provide the basis for the calculation for the price floor (e.g., price freeze, cost-based calculation, etc.).

BellSouth refuses to answer these data requests claiming that the information is irrelevant and requires a burdensome effort by its affiliates.

These requests seek information directed at BellSouth's ability to geographically segment its customer base and direct its marketing accordingly. This series of Data Requests seeks information necessary for the Authority to acquire the appropriate level of granularity for analysis. MCI's Discovery Requests are carefully tailored to obtain the data that the Authority must have to issue a determination consistent with the TRO. (*Id.*, ¶¶ 485, 495, 496, 497, fn. 1579.) Moreover, this information is relevant because it determines BellSouth's ability to target competitive pricing responses following entry by competitors. (TRO, ¶¶ 80, 83, 88, fn. 298, 539).

### **Request No. 193 (Granular Average Revenues)**

MCI-193 Please provide average total revenue for each BellSouth wire center in Tennessee.

BellSouth objects, contending that the information sought is irrelevant and unduly burdensome. The information requested by MCI is directly relevant because it seeks to gather revenue data necessary to determine whether operation is profitable. This data is crucial because it is precisely the type of customer data necessary for the Authority to complete a sufficiently granular analysis of the market. (TRO, ¶¶ 485, 495, 496, 497, fn. 1579) In considering any economic barriers to entry, the Authority will be required to consider the potential revenues available in a given market. (Id.) Without this information, the Authority will not be able to determine whether switch-based competition currently exists or is eventually possible in Tennessee. MCI does not seek information that BellSouth cannot produce from existing sources. Rather, MCI simply requests that BellSouth provide its available data. Although BellSouth may prefer not to divulge much of this data, the TRO's detailed analyses require BellSouth to comply with these data requests.

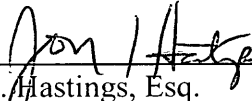
### **Request for Production of Documents, Item No. 1**

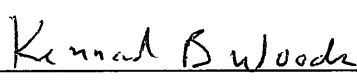
For the reasons stated, BellSouth should produce the documents that are referable to the Requests discussed above.

#### IV. CONCLUSION

MCI hereby moves to compel responses to its Discovery Requests on the grounds set forth herein.

Respectfully submitted,

  
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I hereby certify that on December 12, 2003, a copy of the foregoing document was served on the parties of record, via electronically, US mail or hand delivery:

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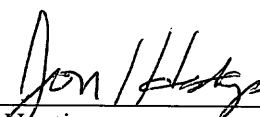
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